

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

J.C.  
...  
...

Plaintiff,

V.

## SOCIETY OF JESUS, OREGON PROVINCE.

Defendant.

CASE NO. C05-1662JLR

## AMENDED ORDER<sup>1</sup>

## I. INTRODUCTION

This matter comes before the court on Plaintiff's motion to amend the complaint to add Seattle University as a Defendant (Dkt. # 11). The court has considered the parties' briefs and supporting declarations, as well as their presentations at oral argument. For the reasons stated below, the court DENIES the motion to amend.

## II. BACKGROUND & ANALYSIS

Although Plaintiff's motion comes disguised as a routine motion to amend the complaint by adding a new party, the impact of granting the motion will be a requirement that the court remand this action to King County Superior Court. Plaintiff apparently prefers the state forum, as he brought this action there originally on September 7, 2005 to recover damages for alleged sexual abuse at the hands of a friar who worked for

<sup>1</sup>The court issues this amended order solely to correct a clerical error in the first sentence of Part II of its May 4, 2006 order (Dkt. # 18).

1 Defendant. Defendant, domiciled in Oregon, properly removed the action to this court in  
2 October 2005 on the basis of diversity of citizenship. Plaintiff's domicile is Washington.  
3

4 Under 28 U.S.C. § 1447(e), the court has only two options when considering a  
5 motion to amend that would add a non-diverse party in a removed action where the court  
6 is exercising diversity jurisdiction. The court may either "deny joinder, or permit joinder  
7 and remand the action to the State court." Id. Thus, if the court grants the motion to  
8 amend, and thus permits the joinder of Seattle University, the court has no choice but to  
9 remand this action, as Seattle University and Plaintiff both have a Washington domicile.

10 Under Fed. R. Civ. P. 15(a) ("Rule 15"), a court should grant leave to amend  
11 freely "when justice so requires." Rule 15 allows for liberal amendment of pleadings,  
12 and a court should grant a motion to amend absent "undue delay, bad faith or dilatory  
13 motive on the part of the movant, repeated failure to cure deficiencies by amendments  
14 previously allowed, undue prejudice to the opposing party by virtue of allowance of the  
15 amendment, [or] futility of amendment." Eminence Capital, LLC v. Aspeon, Inc., 316  
16 F.3d 1048, 1052 (9th Cir. 2003) (quoting Foman v. Davis, 371 U.S. 178, 185 (1962)).  
17 When a party seeks leave to amend in order to add a new party, the court considers both  
18 the general principles of Rule 15 and the joinder provisions of Fed. R. Civ. P. 20. In this  
19 case, the court notes that Plaintiff appears to have a basis under the standards of Rule 20  
20 to add Seattle University as a party, and appears to have made a colorable showing that  
21 its claim against Seattle University is not futile.  
22

23 The primary prejudice to the Defendant is that remanding this action to state court  
24 will no doubt substantially delay the trial of this action. Defendant argues that the court  
25 should also consider its choice of forum and the bias it will face in state court. Neither  
26 the Defendant's choice of forum nor the alleged bias of Washington courts is a proper  
27 basis for a finding of prejudice.  
28

ORDER – 2

1       Were legal merit and potential prejudice the only considerations, the court might  
 2 grant the instant motion. However, the court must also consider “undue delay, bad faith,  
 3 or dilatory motive” on Plaintiff’s behalf. Eminence Capital, 316 F.3d at 1052.

4       In his moving papers, Plaintiff claimed that the information that led it to seek an  
 5 amendment was relatively new:

6           *During discovery in this case, plaintiffs have learned that certain officials*  
 7 *within Seattle University had knowledge of [the friar's] sexual abuse of*  
 8 *minors and that at the time Seattle University officials learned of the abuse,*  
 9 *they were mandatory reporters under [Washington law].”*

10       Pltf.’s Mot. at 2 (emphasis added).

11       In opposition to the motion, Defendant questioned this assertion. Plaintiff  
 12 responded with a declaration from counsel attaching a letter that provides a colorable  
 13 basis for its proposed claim against Seattle University. The letter, however, is much less  
 14 notable than the declaration that accompanied it. According to counsel for Plaintiff,  
 15 counsel did not acquire the letter “during discovery” as it initially represented, but rather  
 16 “*during a pre-litigation exchange of documents.*” Menely Decl. ¶ 2 (emphasis added).  
 17 The declaration raises two concerns: that counsel for Plaintiff may have misled the court  
 18 about when it learned of evidence supporting claims against Seattle University; and that  
 19 Plaintiff knew of the evidence since at least September 2005, and therefore has waited  
 20 almost *seven months* before seeking leave to amend to join a new party.

22       The court held a hearing to inquire into these concerns. Counsel for Plaintiff  
 23 confirmed that Plaintiff has had the letter in question since before he filed his complaint  
 24 in state court. Counsel for Defendant elaborated and explained that counsel has had the  
 25 evidence since before a June 2005 pre-litigation mediation. Thus, Plaintiff (or his  
 26 counsel) has waited *ten months* before seeking leave to join Seattle University.

27       The court need not decide if Plaintiff’s counsel has sought to intentionally mislead  
 28 the court. Counsel explained at the hearing that the inconsistent representations to the

1 court were unintentional, and that counsel did not realize the import of the evidence  
2 supporting a claim against Seattle University until relatively recently.<sup>2</sup> The court need  
3 not decide whether it accepts this explanation – even if it did, counsel was at best  
4 inexcusably negligent in not bringing its claim against Seattle University much sooner.  
5

6 Under these circumstances, the court finds that Plaintiff has acted in bad faith and  
7 unduly delayed in seeking to add Seattle University as a Defendant. The court finds that  
8 it would not serve the interests of justice to reward counsel's dilatory conduct, and that  
9 the prejudice that Defendant would suffer is undue under these circumstances. The court  
10 therefore denies leave to amend the complaint, and will not permit Plaintiff to join Seattle  
11 University in this action.

12 **III. CONCLUSION**

13 For the foregoing reasons, the court DENIES Plaintiff's motion for leave to file an  
14 amended complaint. (Dkt. # 11). The court will award Defendant attorneys' fees for the  
15 time its counsel spent opposing this motion. The court directs counsel to meet and confer  
16 to stipulate to an appropriate award. If they are unable to do so, Defendant may file a  
17 motion for attorneys' fees.  
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19 Dated this 9th day of May, 2006.

20   
21

22 JAMES L. ROBART  
23 United States District Judge  
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25 <sup>2</sup>In addition, Defendant apparently disclosed the letter a second time in its  
26 December 2005 initial disclosures. This lends support to counsel's assertion that it  
27 learned of the evidence against Seattle University "during discovery," although it does not  
28 begin to explain how counsel failed to learn earlier of evidence in its possession since at  
least June 2005.